

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In Re: BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a
AT&T South Carolina v. Affordable Phone Services, Incorporated d/b/a
High Tech Communications
Docket No. 2010-14-C

BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a
AT&T South Carolina v. Dialtone & More Incorporated
Docket No. 2010-15-C

BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a
AT&T South Carolina v. Tennessee Telephone Service, LLC d/b/a
Freedom Communications USA, LLC
Docket No. 2010-16-C

BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a
AT&T South Carolina v. OneTone Telecom, Incorporated
Docket No. 2010-17-C

BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a
AT&T South Carolina v. dPi Teleconnect, LLC
Docket No. 2010-18-C

BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a
AT&T South Carolina v. Image Access, Incorporated d/b/a New Phone
Docket No. 2010-19-C

AT&T SOUTH CAROLINA’S PROPOSED ORDER

In January 2010, AT&T South Carolina filed Complaints against each of the Respondents (collectively, “Resellers”), and by Order dated January 20, 2010, the Commission granted AT&T South Carolina’s Motion for Limited Consolidation. The Resellers answered these respective Complaints and filed various counterclaims and motions, to which AT&T South Carolina responded. On July 23, 2010 the parties submitted their “Stipulations for Consolidated Phase.” On August 20, 2010, the Commission granted the Parties’ Joint Motion on Procedural Issues by holding all pending motions in abeyance and convening this Consolidated Phase of these

proceedings to resolve the following issues: (a) how cash back credits to the Resellers should be calculated; (b) whether the word-of-mouth promotion is available for resale and, if so, how the credits to resellers should be calculated; and (c) how credits to resellers for waiver of the line connection charges should be calculated.

On December 15, 2010, the Commission held an evidentiary hearing on these three issues. AT&T South Carolina was represented by Patrick W. Turner, Esq. Affordable Phone Services, Inc., Dialtone & More, Inc., and Tennessee Telephone Service, LLC¹ were represented by John J. Pringle Jr., Esq. and Henry Walker, Esq. dPi Teleconnect, LLC was represented by John J. Pringle Jr., Esq. and Anton Christopher Malish, Esq. Image Access, Inc. was represented by John J. Pringle Jr., Esq. and Paul Guarisco, Esq. The Office of Regulatory Staff was represented by Shealy Boland Reibold, Esq. AT&T South Carolina presented the testimony of William E. Taylor, Ph.D. The Resellers presented the testimony of Mr. Joseph Gillan and Christopher C. Klein, Ph.D.

On March 21, 2011, the parties submitted Proposed Orders and supporting Briefs. We have carefully reviewed these submissions, the evidence of record, and the controlling law, and this Order sets forth our rulings in this Consolidated Phase.

I. DISCUSSION

Federal law provides that prices for resold telecommunications services shall be set on the basis of retail rates charged to subscribers for the service requested, excluding the portion thereof attributable to costs that are avoided when an incumbent local exchange carrier (“ILEC”)

¹ Tennessee Telephone Services, Inc., which has filed for bankruptcy protection, has decided not to participate in this Consolidated Phase, but it has agreed to be bound by all rulings and determinations made in this Consolidated Phase. *See* Stipulation Regarding Participation of Tennessee Telephone Service, Inc. d/b/a Freedom Communications, LLC in Consolidated Proceeding in Docket No. 2010-16-C (December 15, 2010).

like AT&T South Carolina provides a service on a wholesale basis rather than on a retail basis.² In 1997, we used cost studies and other evidence presented in a contested case proceeding to determine the aggregate amount of “avoided costs” associated with AT&T South Carolina’s retail services, and we divided that aggregate “avoided cost” figure by the aggregate revenue generated by those services. The result was the uniform resale discount rate of 14.8% for the residential services at issue in this docket. *See Order on Arbitration, In re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order No. 97-189 in Docket No. 96-358-C at 14 (March 10, 1997). The issues in this Consolidated Phase are how our 14.8% discount rate should be applied to cashback and line connection charge waiver (LCCW) promotions, and whether it applies at all to referral marketing promotions like the word-of-mouth program.

A. CASHBACK PROMOTIONS

AT&T South Carolina uses a two-step process to resell a telecommunications service that is subject to a retail cashback promotion: (1) a Reseller orders the requested telecommunications service and is billed the standard wholesale price of the service (which is the standard retail price of the service discounted by the 14.8% resale discount rate established by the Commission); and (2) the Reseller requests a cashback promotional credit which, if verified as valid by AT&T South Carolina, results in the Reseller receiving a bill credit in the amount of the face value of the retail cashback benefit discounted by the 14.8% resale discount rate established by the Commission. (*See Stipulations for Consolidated Phase at ¶¶7-9; Taylor Direct at 14-15*). To illustrate AT&T South Carolina’s method, assume a promotion that provides qualifying retail customers a one-time \$50 cashback benefit when they purchase a service with a monthly price of

² 47 U.S.C. § 252(d)(3)(emphasis added).

\$80. If a Reseller qualifies to purchase this promotion for resale, AT&T South Carolina gives the Reseller a \$42.60 promotional cashback credit, which results in the Reseller paying a net of \$25.56 for the first month of service:

Amount Reseller was Billed Initially:	\$68.16 (\$80 discounted by 14.8%)
<u>Amount Reseller is Credited:</u>	<u>(\$42.60) (\$50 discounted by 14.8%)</u>
Net Reseller Pays For “Cashback” Month	\$25.56

(See See Stipulations for Consolidated Phase at ¶¶7-9; AT&T South Carolina’s Opening Statement, Tr. at 9-10; Powerpoint Presentation at Slide 6). This net amount of \$25.56 for the first month of service reflects a 14.8% discount from the \$30 promotional price (\$80 standard price less \$50 cashback) a retail customer would pay for the first month of service. Accordingly, we find that AT&T South Carolina’s method is mathematically identical to applying the Commission-approved 14.8% resale discount percentage exactly once to the \$30 promotional price of the service:

$\text{Wholesale} = \text{Promotional Price} - [(\text{Promotional Price}) \times (\text{Resale Discount Percentage})]$

As explained below, we find that AT&T South Carolina’s method complies with applicable law and, therefore, is appropriate.

In its *Local Competition Order*,³ the FCC anticipated that state commissions would implement the “avoided cost” requirements of Section 252(d)(3) by adopting resale discount percentage rates like the 14.8% rate we established. The FCC explained that when avoided costs are determined in this manner, state commissions “may then calculate the portion of a retail price

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, (1996)(*Local Competition Order*), *subsequent history omitted*. In this Order, the FCC concluded that it was “especially important to promulgate national rules for use by state commissions in setting wholesale rates” that will “produce results that satisfy the intent of the 1996 Act,” and it stated that “[t]he rules we adopt and the determinations we make in this area are crafted to achieve these purposes,” *Id.* at ¶907.

that is attributable to avoided costs by multiplying the retail price by the discount rate.” *See Local Competition Order* at ¶ 908. The FCC went on to explain that when a promotional offering is available from more than 90 days (as is the case with the promotions at issue in this Consolidated Phase), the promotional price ceases to be short-term ***and must therefore be treated as a retail rate for an underlying service.***” *Id.* at ¶¶949-50 (emphasis added). We find, therefore, that AT&T South Carolina’s two-step method described above is appropriate because it is mathematically identical to applying the 14.8% resale discount rate we established to the promotional price of the service.

The Fourth Circuit’s decision in the *Sanford* case supports our decision. *BellSouth Telecom. Inc. v. Sanford*, 494 F.3d 439 (4th Cir. 2007)(*Sanford*). There, the Fourth Circuit “conclude[d] that the [North Carolina] Commission correctly ruled that ‘long-term promotional offerings offered to customers in the marketplace for a period of time exceeding 90 days have the effect of ***changing the actual retail rate to which a wholesale requirement or discount must be applied.***’”⁴ Noting the FCC’s finding that “a promotion or discount offered for more than 90 days became part of a retail rate that had to be offered to competing LECs,”⁵ the Fourth Circuit affirmed the North Carolina Commission’s conclusion “that when such incentives [like cashback or gift cards] are offered, ***the nominal tariff (the charge that appears on the subscriber’s bill) is not the ‘retail rate charged to subscribers’ under §252(d)(3)*** because the nominal tariff does not reflect the value of the incentives.”⁶ The Fourth Circuit then provided the following example to explain its decision:

Suppose BellSouth offers its subscribers residential telephone service for \$20 per month. Assuming a 20% discount for avoided costs, BellSouth must resell this

⁴ *Id.* at 442 (emphasis added).

⁵ *Id.* at 452.

⁶ *Id.* at 450 (emphasis added).

service to competitive LECs for \$16 per month, enabling the competitive LEC to compete with BellSouth's \$20 retail fee. Now suppose that BellSouth offers its subscribers telephone service for \$120 per month, but sends the customer a coupon for a monthly rebate check for \$100. According to the NC Commission's orders, *the appropriate wholesale rate is still \$16*, because that is the *net price paid by the retail customer (\$20), less the wholesale discount (20%)*.⁷

This \$16 wholesale price that the Fourth Circuit affirmed is exactly the price that results when AT&T South Carolina's method is applied to this scenario. (Taylor Rebuttal, Tr. at 87-88).⁸

In addition to being consistent with applicable law, AT&T South Carolina's method also is consistent with economic reality. The Resellers' witnesses testified that a \$50 one-time cashback benefit reduces the effective retail price of a resold telecommunications service by \$50. (Gillan Cross, Tr. at 246-47; Composite Hearing Ex. No. 12, Klein Depo. at 44). As a result of the "avoided cost" pricing standard in Section §252(d)(3), however, changes in the retail price of a telecommunications service do not flow through to a reseller on a dollar-for-dollar basis. For example, if the standard retail price of a service is increased by \$50 (from \$30 to \$80, for example), the wholesale price for the service does not increase by \$50. Instead, it increases by only \$42.60:

	Retail	Wholesale
New Price	\$80	\$68.16 (\$80 discounted by 14.8%)
<u>Initial Price</u>	<u>\$30</u>	<u>\$25.56 (\$30 discounted by 14.8%)</u>
Difference	\$50	\$42.60 (\$50 retail difference discounted by 14.8%)

The Resellers' witnesses testified that, conversely, a \$50 reduction in the standard retail price of a service does not result in a \$50 reduction in the wholesale price of the service, but instead

⁷ *Id.* at 450.

⁸ Although neither decision is binding on this Commission, we note that AT&T South Carolina's method also is consistent with a more recent decision by the North Carolina Commission and with a more recent proposed recommendation of an administrative law judge in a similar proceeding in Louisiana.

results in a \$42.60 reduction in the wholesale price of the service. (Gillan Cross, Tr. at 235; Hearing Exhibit No. 4; Klein Cross, Tr. at 303-04; Hearing Exhibit No. 4).⁹ We find that it is appropriate that AT&T South Carolina provides the Resellers the same \$42.60 wholesale price reduction when the retail price reduction takes the form of a cashback benefit as the resellers would receive if it took the form of a \$50 reduction to the “standard price.” (See Taylor Direct, Tr. at 54).

We reject each of the various alternative methods the Resellers proposed to use in applying the 14.8% resale discount to cashback offerings. We find that each method is inconsistent with the *Local Competition Order* and the *Sanford* decision. The evidence presented and the discussion at pages 27-30 of AT&T South Carolina’s brief persuade us that each of the Resellers’ alternative proposals overstates the avoided cost estimate, which in turn distorts the 14.8% resale discount rate we established and understates the wholesale price Resellers are required to pay for the services they order from AT&T South Carolina.

Moreover, based on the evidence before us, we are not persuaded by the Resellers’ argument that AT&T’s method produces wholesale prices that are higher than retail prices. This condition arises only if the one-time cashback promotional benefit exceeds the monthly retail price of the service – in those situations, the resellers receives less money from AT&T South Carolina for keeping the service for only a month or two than a retail customer would receive from AT&T South Carolina for keeping the service only a month or two. (See Hearing Exhibit 10; Attachments Q and R to AT&T South Carolina’s Brief). As an initial matter, we find it is not appropriate to consider a single month or two in isolation. Resellers’ witness Dr. Klein, for

⁹ To simplify the math, Hearing Exhibit No. 4 assumed a 20% resale discount, which resulted in a \$40 reduction in the wholesale price. When the actual 14.8% resale discount rate is used, the reduction is \$42.60.

instance, testified that in considering pricing issues such as predatory or below-cost pricing, “you would have to look at more than one month,” (Klein Cross, Tr. at 301; Composite Exhibit 12, Klein Depo. at 57-58), and this Commission historically has allowed companies to recover their “up front” costs over a reasonable period of time instead of requiring that all such costs be recovered in the first month of service.

Under AT&T South Carolina’s method, a Reseller that keeps the service for more than a month or two always pays a net amount that is not only *less* than what the retail customer pays, but that is less by the 14.8% resale discount rate we established. (See Hearing Exhibit 10; Attachments Q and R to AT&T South Carolina’s Brief). And the evidence shows that on average, both AT&T South Carolina’s customers and the Resellers’ customers keep service more than a month or two. AT&T South Carolina’s witness Dr. Taylor testified that “on average, the customer tenure for these \$50 cashbacks is much, much longer than one month,” (Taylor Cross, Tr. at 146-47), and AT&T South Carolina presented evidence (testimony given under oath by the CEO of one of the Resellers in another proceeding) that the churn rate for resellers “ranges from a low of 10% [meaning their customers stay an average of ten months] to a high of 30% [meaning their customers stay an average of three months].” Taylor Rebuttal, Tr. at 112. Based on this evidence, we find that over a reasonable period of time, Resellers appropriately pay 14.8% less than retail customers pay under AT&T South Carolina’s method.

Even if it were appropriate to consider only a single month in determining this issue (and we find that it is not), we nonetheless would approve AT&T South Carolina’s method. In its *Local Competition Order*, the FCC excluded short-term promotions from the federal Act’s resale

obligations and thus sanctioned retail prices that temporarily are higher than wholesale prices,¹⁰ recognizing that

promotions that are limited in length may serve procompetitive ends through enhancing marketing and sales-based competition and *we do not wish to unnecessarily restrict such offerings*. We believe that, *if promotions are of limited duration, their procompetitive effects will outweigh any potential anticompetitive effects*. We therefore conclude that short-term promotional prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation.

Local Competition Order, ¶ 949 (emphasis added). The same policy considerations that led the FCC to exclude short-term promotions from the Federal Act’s resale obligations apply with equal force here. The cashback offerings at issue in this proceeding are the type of pro-competitive “enhance[ed] marketing and sales-based competition” the FCC envisioned, and they clearly benefit South Carolina consumers. By making it more expensive for AT&T South Carolina to offer these promotions (by causing AT&T South Carolina to pay higher credits than is appropriate), the Resellers’ proposed methods would discourage these pro-competitive promotions that are beneficial to consumers in South Carolina. And nothing in the record suggests that the Resellers’ proposed methods would in any way benefit consumers who purchase services from them. Moreover, as AT&T South Carolina demonstrates in its Brief, at worst AT&T South Carolina’s position allows the Reseller to use the same cashback offering AT&T South Carolina uses to attract customers for a fraction of the out-of-pocket amount AT&T South Carolina incurs to use the same promotions. Based on the evidence before us, it appears that the more likely outcome is that while AT&T South Carolina is out-of-pocket in the first

¹⁰ Assume, for example, a promotion that provides that for 90 days, retail customers pay \$50 a month for a service with a standard retail price of \$100 a month, after which they pay the standard monthly price of \$100. For 90 days, retail customers would pay \$50 each month for this service, while Resellers would pay the higher price of \$85.20 each month (\$100 less the 14.8% discount) for the same service.

month of a cashback promotional offering, the Resellers actually make money (from both AT&T South Carolina and their own end users) in the first month. Clearly, AT&T South Carolina's method does not impede a Resellers' ability to compete in the marketplace.

We also reject the Resellers' "price squeeze" arguments. Reseller witness Dr. Klein conceded that: he is not claiming that AT&T is trying to force the resellers out of business by creating a price squeeze; he is not claiming that AT&T has any sort of predatory intent; he is not claiming a violation of Section 2 of the Sherman Act; and in his view as an economist, there is not sufficient evidence in this docket to show a violation of section 2 of the Sherman Act. (Klein Cross, Tr. at 302-03). And while Dr. Klein stated that he is testifying about a price squeeze in the regulatory context of the 1996 Act and the FCC's Rules and Orders implementing the 1996 Act, (Klein Cross, Tr. at 303), he conceded that if this Commission determines and the courts affirm that AT&T South Carolina's method complies with the resale provisions of federal law, there would be no price squeeze in the "regulatory context" about which he testifies. (*See* Klein Cross, Tr. at 304-06). Because AT&T South Carolina's method does, in fact, comply with federal law, there simply is no price squeeze here.

Finally, we reject the Resellers' "rebate" argument. The 1996 Act requires AT&T South Carolina to pass certain aspects of a service along to the Resellers in the same manner they are provided to retail customers, but price is not one of them. Instead, the 1996 Act as implemented by this Commission authorizes AT&T South Carolina to establish the wholesale price of a service by applying the 14.8% resale discount rate to the retail price of the service. And the Resellers' witness Dr. Klein testified that a cashback benefit does not impact any aspect of a telecommunications service other than its price: "as far as I know about what's at issue here, that's correct. It's just the monetary arrangements" (Composite Hearing Exhibit 12, Klein Depo.

at 84).¹¹ This point is further demonstrated by the *Sanford* decision, which generally characterizes cashback promotions as “rebates.”¹² Additionally, in addressing the example of a \$120 standard monthly price and a \$100 monthly cashback benefit, *Sanford* specifically refers to “a coupon for a monthly *rebate* check for \$100.”¹³ Calling the check a “rebate,” however, did not lead the Fourth Circuit to apply its hypothetical 20% resale discount to the \$120 “standard” price as the Resellers propose. To the contrary, the Fourth Circuit confirmed the North Carolina Commission’s reasoning that the resale discount must be applied to the promotional price of \$20 that results when the “monthly rebate check for \$100” is applied to the \$120 standard price for the offering.

II. LCCW PROMOTIONS

A line connection charge waiver (LCCW) promotion waives the nonrecurring installation charge for a new retail customer, and a qualifying retail customer pays zero for the line connection. (Taylor Direct, Tr. at 68-69; Stipulations at ¶¶7-9). Assuming a \$40 line connection charge, when AT&T South Carolina resells a LCCW promotion, the Reseller is initially billed \$34.08 for the line connection.¹⁴ (*Id.*). If the Reseller requests and qualifies for a LCCW promotional credit, AT&T South Carolina gives the Resellers a bill credit in the amount of \$34.08.¹⁵ (*Id.*). Under AT&T South Carolina’s method, therefore, the retail customer and the

¹¹ Dr. Klein also testified that: end users who receive a cashback “rebate” receive the same features, functionality, and quality of service as end users who do not receive the cashback “rebate,” (Klein Cross, Tr. at 314-15); and “what we’re arguing about on these promotions is the price that should be charged” (Composite Hearing Exhibit 12, Klein Depo. at 83);

¹² See *Sanford*, 494 F.3d at 442, 449.

¹³ *Id.* at 450.

¹⁴ This is the \$40 retail price discounted by 14.8%.

¹⁵ Again, this verification step is necessary because resellers like dPi have systemically requested promotional credits to which they are not entitled. See fn. 3 above. And while nothing prevents AT&T South Carolina’s service representatives from speaking to retail

wholesale customer both pay a net amount of zero for the line connection charge. (*Id.*). The Resellers, however, argue that instead of charging them the same net of zero that AT&T South Carolina charges retail customers, AT&T South Carolina must actually pay the Resellers \$5.92 when they qualify for a waiver of a line connection charge. (Composite Exhibit 12, Klein Depo. at 74; Klein Cross, Tr. 297-98).¹⁶ For the same reasons set out in the “cashback” discussion above, we disagree and find that AT&T South Carolina’s method is appropriate.

We find that when a LCCW promotion is resold, \$0 is the price to which the 14.8% resale discount rate is to be applied. (*See* Klein Cross, Tr. at 297-98)(when AT&T waives the line connection charge for a retail customer, it “effectively charges a zero to that retail customer for line connection.”). The 1996 Act provides that prices for resold services shall be set “on the basis of retail rates charged to subscribers for the telecommunications service requested . . . ,”¹⁷ and the Fourth Circuit explained that when an incentive like a LCCW promotion is offered, “the nominal tariff (the charge that appears on the subscriber’s bill) is not the ‘retail rate charged to subscribers’ under §252(d)(3) because the nominal tariff does not reflect the value of the incentives.”¹⁸ Because \$0 is the “retail rate charged to the subscriber,” it is \$0 to which the resale discount rate is applied. Discounting the \$0 retail price by 14.8% produces a wholesale price of \$0. (*See* Klein Cross, Tr. at 301)(if this Commission were to determine that some

customers in real time to determine whether they qualify for a promotion, AT&T South Carolina’s service representative are prohibited from having similar contact with the Resellers’ end user customers. (Taylor Redirect, Tr. at 175-76).

¹⁶ In the examples used in the deposition and in the hearing, the line connection charge was \$50 and the resale discount was 20%, thus Dr. Klien testified that the resellers are asking for a \$10 (\$50 X 20%) credit. In the example of a \$40 line connection charge and the Commission-approved 14.8% resale discount, the amount of credit claimed by the resellers would be \$5.92 (\$40 X 14.8%).

¹⁷ 47 U.S.C. §252(d)(3).

¹⁸ *Sanford*, 494 F.3d at 450 (emphasis added).

service had a regular retail rate of zero, then “there would be no attributable avoided cost under the current system of calculating avoided cost.”).

III. WORD-OF-MOUTH PROMOTION

Under referral marketing programs such as the “word of mouth” offering, qualifying AT&T South Carolina retail customers can receive promotional benefits such as gift cards if they convince friends and family members who are not AT&T retail customers to purchase particular AT&T services. (Stipulations, Attachment C; Taylor Direct, Tr. at 34). Some of the Resellers argue that AT&T must “resell” these referral marketing promotions by paying a Reseller a word-of-mouth referral benefit when one of that Reseller’s end users convinces friends and family members to purchase services, not from AT&T, but from that Reseller. (Klein Cross, Tr. at 317-18). Their witness, however, acknowledged that no resale obligation arises in any of a number of analogous situations. (Klein Cross, Tr. at 318-19).

We find that these referral marketing promotions are not subject to resale. Resale obligations apply only to “telecommunications services” AT&T South Carolina provides at retail.¹⁹ We find that a marketing referral program like “word-of-mouth” is not a service AT&T South Carolina offers its customers but, instead, it is a benefit it provides to its customers in exchange for services they provide to AT&T South Carolina. We find that those services its customers provide are not telecommunications service.

We further find that unlike the cashback offerings discussed above, these referral marketing programs have no impact on the price a retail customer pays for telecommunications services provided by AT&T South Carolina. If a retail customer does nothing more than purchase a telecommunications service from AT&T South Carolina, that customer does not

¹⁹ See 47 U.S.C. §251(b)(1), (c)(4).

receive any benefit under the word-of-mouth promotion. (Klein Cross, Tr. at 320; Composite Hearing Exhibit 12, Klein Depo. at 77-78). Instead, to receive a word-of-mouth benefit, a retail customer must take the additional action of contacting and convincing a person who is not an AT&T retail customer to buy a qualifying AT&T service. (Klein Cross, Tr. at 320-21; Klein Depo. at 78). And as Dr. Taylor further explained, a retail customer can receive one, two, or more payments under the word-of-mouth promotion without changing the telecommunications services she buys. (Taylor Direct, Tr. at 74). Clearly, “word-of-mouth” benefits do not impact the price a retail customer pays for retail services; instead, they reward the retail customer for actions he or she performs for AT&T South Carolina.

Finally, we are persuaded that it is not unreasonable to consider the services performed by customers under a marketing referral program as “marketing” services. (Klein Cross, Tr. at 321-22). And whatever the 1996 Act may require AT&T South Carolina to make available for resale, benefits provided in exchange for marketing services performed for the company simply is not one of them. We are persuaded by the following testimony of AT&T South Carolina witness Dr. Taylor:

Remember how resale was supposed to work back in 1996 when they thought it up. It was the ILECs – AT&T in this case – have an advantage: they’ve got a network out there. If you ever want local competition, we’d better require that they share that network, so other firms, like the resellers here, can buy services on that network and compete with AT&T *on the non-network part of the business* – the customer service, the marketing, those things. Well, if you then require AT&T to resell at an avoided-cost discount its marketing initiatives, that just makes a mockery of the resale competition that this was all put in place to do.

(Taylor Summary, Tr. at 126)(emphasis added). Accordingly, we find that AT&T South Carolina is not required to make word-of-mouth or other referral marketing promotions available for resale.

CONCLUSION

Based on the foregoing, it is hereby ordered that:

1. It is appropriate for AT&T South Carolina to make cashback promotional offerings available for resale by a two-step process whereby: (1) the reseller orders the requested service and is billed the standard retail price of the service discounted by the 14.8% resale discount rate established by the Commission; and (2) the reseller requests a cashback promotional credit which, if verified as valid by AT&T South Carolina, results in the reseller receiving a bill credit in the amount of the face value of the retail cashback benefit discounted by the 14.8% resale discount rate established by the Commission.;

2 It is appropriate for AT&T South Carolina to make LCCW promotional offerings available for resale by a two-step process whereby: (1) the reseller is initially billed the standard retail price for the line connection discounted by the 14.8% resale discount rate established by the Commission; and (2) the reseller requests a LCCW promotional credit which, if verified as valid by AT&T South Carolina, results in the reseller receiving a bill credit in the amount of the standard retail price for the line connection discounted by the 14.8% resale discount rate established by the Commission; and

3. AT&T South Carolina is not required to make marketing referral promotions like the “word-of-mouth” offering available for resale.

This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

John E. Howard, Chairman

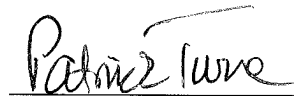
ATTEST:

David A. Wright, Vice Chairman

(SEAL)

Respectfully submitted on this the 21st day of March, 2011.

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d/b/a AT&T SOUTH CAROLINA



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